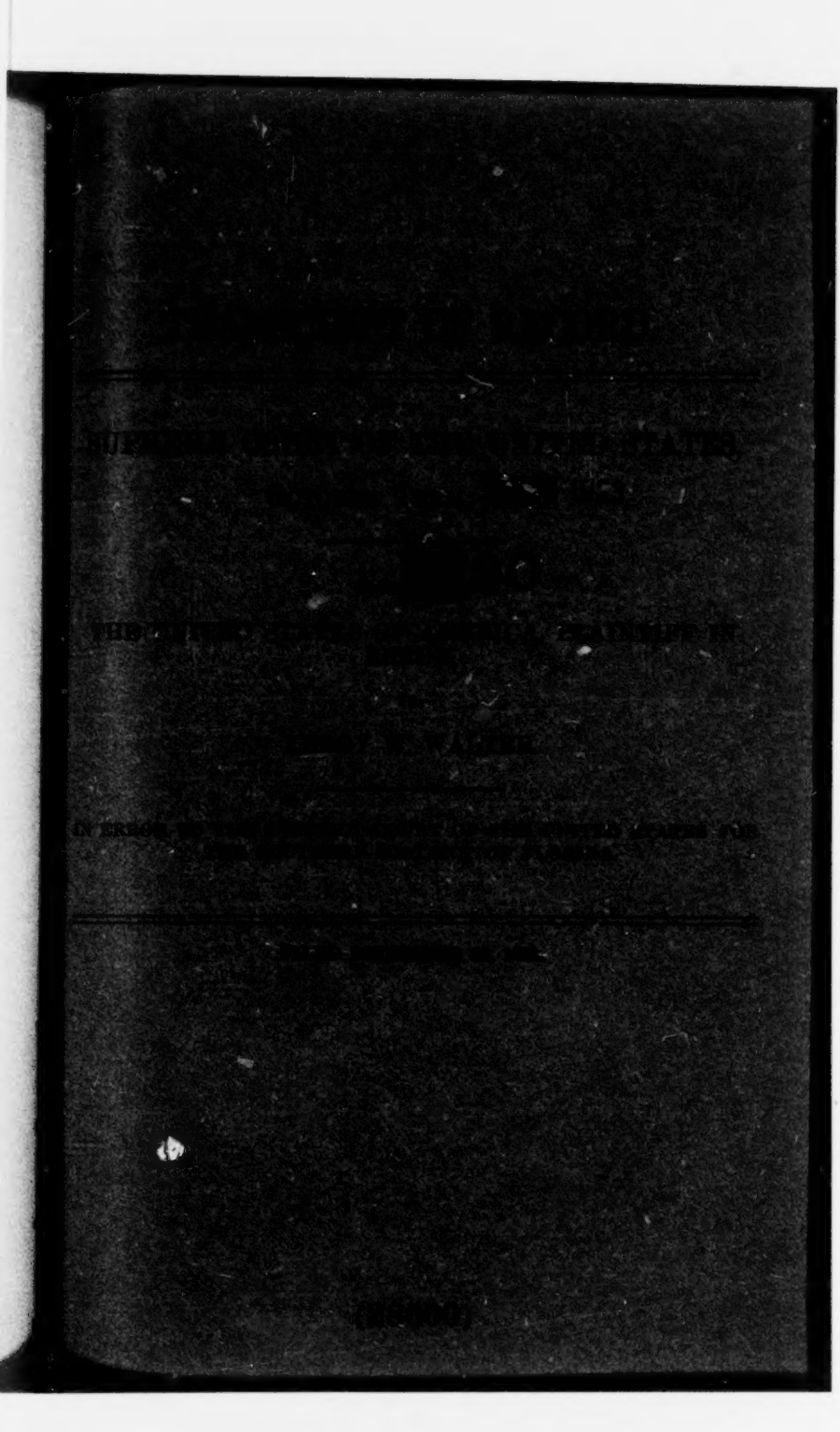

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 223.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

LEROY W. WALTER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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A *Writ.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the District Court of the United States for the Southern District of Florida, greeting:

Because of the record and proceedings, and also in the rendition of the decision sustaining a demurrer to an indictment which is in said district court before you, between the United States of America and Leroy W. Walter, a manifest error has happened to the great damage of the said United States of America as by its complaint appears. We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your hand and seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 15h day of April, A. D. 1921, in the Supreme Court then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] EDWIN R. WILLIAMS,
Clerk of the District Court of the United States for the Southern District of Florida.

#1101. United States District Court, Southern District of Florida. United States vs. Leroy W. Walter. Writ of error.

1 In the District Court of the United States of America in and for the Southern District of Florida.

Special June term thereof. A. D. 1920. Held at Jacksonville, Florida.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the Southern District of Florida, upon their oaths present:

That heretofore, to wit, on the 1st day of January, 1919, and thence continuously until the finding of this indictment the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbia; that on the said 1st day of January, 1919, and thence continuously

until the finding of this indictment the United States was a stockholder in said United States Shipping Board Emergency Fleet Corporation, and of which the United States of America is and was at all times and places herein stated the sole owner; and the grand jurors aforesaid upon their oaths aforesaid do further present that heretofore, to wit, on the 23rd day of April, 1919, and hence continuously until the 30th day of April, 1919, at and in the district aforesaid and within the jurisdiction of this court, W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, whose christian names are to the grand jurors unknown, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang unlawfully and knowingly among themselves and with divers other persons to the grand jurors unknown, did combine, conspire, confederate and agree together to commit an offense against the United States, to wit, to make and to cause to be made and to present and to cause to be presented for approval and payment to the proper officer or employee of said United States Shipping Board Emergency Fleet Corporation a certain claim upon and against said United States Shipping
2 Board Emergency Fleet Corporation, which said claim was then and there to be fraudulent in this respect, to wit, that then and there during the period of time last aforesaid the said W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang entered into an agreement and conspiracy whereby the said W. S. Bartlett, under the name and alias of C. Williams, and the said G. M. Crocker, under the name and alias of H. Walker, would work and be employed by the said Leroy W. Walter, who was then and there acting on behalf of a firm known as Duval Ship Outfitting Company, to do and perform in divers capacities certain work which was then and there to be performed by said Duval Ship Outfitting Company for said United States Shipping Board Emergency Fleet Corporation, said work to be done in and upon a certain vessel then and there belonging to said United States Shipping Board Emergency Fleet Corporation and then and there known as United States Shipping Board vessel "Caribou"; that the said Leroy W. Walter would collect from said United States Shipping Board Emergency Fleet Corporation by means of weekly vouchers which were to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and described as Duval Ship Outfitting Company weekly wages for him, the said W. S. Bartlett, under the name and alias of C. Williams, as a workman then and there to be known and described as a "leading man" on said vessel "Caribou," and would pay or cause to be paid to the said W. S. Bartlett, alias C. Williams, the wages last aforesaid, which claim embodied in said weekly vouchers which were to be presented to said United States Shipping Board Emergency Fleet Corporation as aforesaid was to be fraudulent in this

respect, to wit, that at the time when it was agreed said vouchers would be presented, the said W. S. Bartlett was then and there
3 to be employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of captain of said vessel called "Caribou"; that in his said capacity and employment as captain of said vessel "Caribou," in which capacity he, the said W. S. Bartlett, was then and there to be receiving a salary as aforesaid, while the work was being done upon said vessel called "Caribou" which it was agreed the said W. S. Bartlett would perform as "leading man" as aforesaid, it was then and there to be the duty (and it is expressly charged that it was the duty) of him, the said W. S. Bartlett, to act as assistant inspector and pass upon the question as to whether said work was being done in a fitting, proper and workmanlike manner, and it was also to be the duty of him, the said W. S. Bartlett, to inspect and pass upon the question as to whether the work of a large number of other persons who were then and there employed and to be employed upon said vessel known as "Caribou," at the time when it was agreed the said W. S. Bartlett would work upon said vessel called "Caribou" as a "leading man" as aforesaid, was being done in a fitting, proper and workmanlike manner; and that said claim to be presented as aforesaid was further to be fraudulent in that it was agreed that the material fact that the said W. S. Bartlett was actually employed and being paid to do work as a "leading man" on said vessel "Caribou" and was failing and neglecting to do the work of and act as assistant inspector upon said boat would by means of the alias and fictitious name of C. Williams be concealed and covered up from the said United States Shipping Board Emergency Fleet Corporation. And in said conspiracy it was further agreed that the said Leroy W. Walter would collect from said United States Shipping Board Emergency Fleet Corporation, by means of weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and described as Duval Ship Outfitting Company, weekly
4 wages for him, the said G. M. Crocker under the name and alias of H. Walker, as a workman then and there to be known and described as a "quarterman" on said vessel "Caribou," and would pay or cause to be paid to the said G. M. Crocker, alias H. Walker, the wages last aforesaid; which claim embodied in said weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation as aforesaid was to be fraudulent in this respect, to wit, that at the time when it was agreed said vouchers would be presented, the said G. M. Crocker was then and there to be employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of chief engineer of said vessel called "Caribou" that in his said capacity and employment as chief engineer of said vessel "Caribou,"

in which capacity he, the said G. M. Crocker, was then and there to be receiving a salary as aforesaid, while the work was being done upon said vessel called "Caribou" which it was agreed the said G. M. Crocker would perform as "quarterman" as aforesaid, it was then and there to be the duty (and it is expressly charged that it was the duty) of him, the said G. M. Crocker, to act as assistant inspector and pass upon the question as to whether said work was being done in a fitting, proper and workmanlike manner, and it was also to be the duty of him, the said G. M. Crocker, to inspect and pass upon the question as to whether the work of a large number of other persons who were then and there employed and to be employed upon said vessel known as "Caribou" at the time when it was agreed the said G. M. Crocker would work upon said vessel called "Caribou" as a "quarterman" as aforesaid, was being done in a fitting, proper and workmanlike manner; and that said claim to be presented as aforesaid was further to be fraudulent in that it was agreed that the material fact that the said G. M. Crocker was actually employed and being paid to do work as a "quarterman" on said vessel "Caribou" and was failing and neglecting to do the work of and act as assistant inspector upon said boat, would, by means of the alias and fictitious name of H. Walker, be concealed and covered up from the said United States Shipping Board Emergency Fleet Corporation.

Overt act No. 1.

That in pursurance of said unlawful conspiracy and agreement and to effect the object thereof the said W. S. Bartlett and G. M. Crocker, at and in the district aforesaid and within the jurisdiction of this court, on the 23rd day of April, 1919, had themselves placed on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and said G. M. Crocker as such captain and chief engineer, respectively, were under the duty and obligation to act as and perform the duties of assistant inspectors of said vessel as aforesaid.

Overt Act No. 2.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said Charles A. Strang, James H. Strang, and Leroy W. Walter placed said W. S. Bartlett and G. M. Crocker on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on the said United States Shipping Board Emergency

Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation
6 as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and said G. M. Crocker as such captain and chief engineer, respectively, were under the duty and obligation to act as and perform the duties of assistant inspectors of said vessel as aforesaid.

Overt act No. 3.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams, did work as a "leading man" on said vessel "Caribou."

Overt act No. 4.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court G. M. Crocker, under the name of H. Walker, did work as a "quarterman" on said vessel "Caribou."

Overt act No. 5.

And that in further pursuance of said unlawful conspiracy and agreement, and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams did draw wages and receive pay in the amount of forty-seven and 04/100 ($47.04) dollars from said Duval Ship Outfitting Company for work done on said vessel Caribou" by said W. S. Bartlett as a "leading man" as aforesaid.

Overt act No. 6.

And that in further pursuance of said unlawful conspiracy
7 and agreement and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said G. M. Crocker, under the name of H. Walker did draw wages and received pay in the amount of seventy-four and 24/100 ($74.24) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said G. M. Crocker as a "quarterman" as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid upon their oats aforesaid do further present:

That heretofore, to wit, on the 1st day of January, 1919, and thence continually until the finding of this indictment the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbus; that on the said 1st day of January, 1919, and thence continuously until the finding of this indictment, the United States was a stockholder in said United States Shipping Board Emergency Fleet Corporation, and of which the United States of America is and was at all times and places herein mentioned the sole owner; and the grand jurors aforesaid upon their oaths aforesaid do further present that heretofore, to wit, on the 23rd day of April, 1919, and thence continuously until the 30th day of April, 1919, at and in the district aforesaid and within the jurisdiction of this court, W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, whose Christian names are to the grand jurors unknown, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang unlawfully and knowingly among themselves and with divers other persons to the grand jurors unknown, did combine, conspire,
8 confederate, and agree together to commit an offense against the United States, to wit, to obtain the payment and approval of certain fraudulent claims known to them, the said W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang, to be fraudulent, against said United States Shipping Board Emergency Fleet Corporation in that then and there during the period of time last aforesaid the said W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang entered into and agreement and conspiracy whereby the said W. S. Bartlett, under the name and alias of C. Williams, and the said G. M. Crocker, under the name and alias of H. Walker, would work and would be employed by said Leroy W. Walter, who was then and there acting on behalf of a firm known as Duval Ship Outfitting Company, to do and perform in divers capacities certain work which was then and there to be performed by said Duval Ship Outfitting Company for said United States Shipping Board Emergency Fleet Corporation, which said work to be done in and upon a certain vessel then and there belonging to said United States Shipping Board Emergency Fleet Corporation and then and there known as the United States Shipping Board vessel "Caribou," and in said conspiracy it was further agreed that the said Leroy W. Walter would collect from said United States Shipping Board Emergency Fleet Corporation by means of weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and designated as

Duval Ship Outfitting Company, weekly wages for him, the said W. S. Bartlett, under the name and alias of C. Williams, as a workman then and there to be known and described as a "leading man" on said vessel "Caribou," and would pay or would cause to be paid to said W. S. Bartlett, alias C. Williams, the wages last aforesaid; that at the time of forming of said conspiracy and of the doing of all the acts herein set forth the said W. S. Bartlett was then and there to be employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of captain of said vessel called "Caribou"; that in his said capacity and employment as captain of said vessel "Caribou," in which capacity he, the said W. S. Bartlett, was then and there to be receiving a salary as aforesaid, and while the work was being done upon said vessel called "Caribou," which it was agreed the said W. S. Bartlett should perform as "leading man" as aforesaid, it was then and there to be the duty (and it is expressly charged that it was the duty) of him, the said W. S. Bartlett, to act as assistant inspector and pass upon the question as to whether said work was being done in a fitting, proper, and workmanlike manner, and it was also to be the duty of him, the said W. S. Bartlett, to inspect and pass upon the question as to whether the work of a large number of other persons who were then and there employed and to be employed upon said vessel known as "Caribou" at the same time when it was agreed the said W. S. Bartlett would work upon said vessel "Caribou" as a "leading man," was being done in a fitting, proper, and workmanlike manner; that in said conspiracy it was further agreed that the material fact that the said W. S. Bartlett was actually employed and being paid to do the work as a "leading man" on said vessel called "Caribou" and was so so failing and neglecting to do the work of and act as assistant inspector upon said vessel by means of a trick, scheme, and device, to wit, the alias and fictitious name, C. Williams, would be concealed and covered up from said United States Shipping Board Emergency Fleet Corporation. And in said conspiracy it was further agreed that the said Leroy W. Walter would collect from said United States Shiping Board Emergency Fleet Corporation, by means of weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and designated as Duval Ship Outfitting Company, weekly wages for him, the said G. M. Crocker, under the name and alias of H. Walker, as a workman then and there to be known and described as a "quarterman" on said vessel called "Caribou," and would pay or cause to be paid to the said G. M. Crocker, alias H. Walker, the wages last aforesaid; that at the time of the forming of said conspiracy and of the doing of all the acts herein set forth the said G. M. Crocker was then and there employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of chief engineer of said vessel called "Cari-

bou"; that in said capacity and employment as a chief engineer of said vessel called "Caribou," in which capacity he, the said G. M. Crocker, was then and there to be receiving salary as aforesaid, and while the work was being done upon said vessel which it was agreed the said G. M. Crocker should perform as "quarterman," as aforesaid, it was then and there to be the duty of him, the said G. M. Crocker, to act as assistant inspector and pass upon the question as to whether or not said work was being done in a fitting, proper, and workmanlike manner, and it was also to be the duty (and it is expressly charged that it was the duty) of him, the said G. M. Crocker, to inspect and pass upon the question as to whether the work of a large number of persons who were then and there employed and to be employed on said vessel "Caribou" at the time when it was agreed the said G. M. Crocker would work upon said vessel "Caribou" as a "quarterman," was being done in a fitting, proper, and workmanlike manner; that in said conspiracy it was further agreed that the material fact that the said G. M. Crocker was actually employed and being paid to do the work as a "quarterman"
11 on said vessel "Caribou" and was failing and neglecting to do the work of and act as assistant inspector upon said boat would, by means of a trick, scheme, and device, to wit, the alias and fictitious name H. Walker, be concealed and covered up from said United States Shipping Board Emergency Fleet Corporation.

Overt act No. 1.

That in pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said W. S. Bartlett and G. M. Crocker, at and in the district aforesaid and within the jurisdiction of this court, on the 23rd day of April, 1919, had themselves placed on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer, respectively, were under the duty and obligation to act as and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 2.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said Charles A. Strang, James H. Strang, and Leroy W. Walter placed said W. S. Bartlett and G. M. Crocker on the pay roll of the Duval Ship Outfitting

Company under the names of C. Williams and H. Walker, respectively, as workmen on the said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said
W. S. Bartlett and G. M. Crocker, were drawing salaries from
12 the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, on said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer, respectively, were under the duty and obligation to act and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 3.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams did work as a "leading man" on said vessel "Caribou."

Overt act No. 4.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court G. M. Crocker, under the name of H. Walker, did work as a "quarterman" on said vessel "Caribou."

Overt act No. 5.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams did draw wages and receive pay in the amount of forty-seven and 04/100 ($47.04) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said W. S. Bartlett as a "leading man" as aforesaid.

13 Overt act No. 6.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said G. M. Crocker, under the name of H. Walker, did draw wages and received pay in the amount of seventy-four and 24/100 ($74.24) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said G. M. Crocker as a "quarterman" as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid upon their oaths aforesaid do further present:

That heretofore, to wit, on the 1st day of January, 1919, and thence continuously until the finding of this indictment the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbia; that on the said 1st day of January, 1919, and thence continuously until the finding of this indictment the United States was a stockholder in said United States Shipping Board Emergency Fleet Corporation, and of which the United States of America is and was at all times and places herein mentioned the sole owner; and the grand jurors aforesaid upon their oaths aforesaid do further present that heretofore, to wit, on the 23rd day of April, 1919, and thence continuously until the 30th day of April, 1919, at and in the district aforesaid and within the jurisdiction of this court, W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, whose christian names are to the grand jurors unknown, Leroy W. Walter,
14 James H. Strang, Henry C. Thomas, and Charles A. Strang unlawfully and knowingly among themselves and with divers other persons to the grand jurors unknown, did combine, conspire, confederate and agree together to defraud the United States of America, in this, to wit, that then and there during the period of time last aforesaid, W. S. Bartlett, alias C. Williams, and G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang entered into a conspiracy and agreement whereby it was agreed that the said W. S. Bartlett, under the name and alias of C. Williams, and the said G. M. Crocker, under the name and alias of H. Walker, would work and be employed by the said Leroy W. Walter, who was then and there acting on behalf of a firm known as Duval Ship Outfitting Company, to do and perform in divers capacities certain work which was then and there to be performed by said Duval Ship Outfitting Company for said United States Shipping Board Emergency Fleet Corporation, said work to be done in and upon a certain vessel then and there belonging to said United States Shipping Board Emergency Fleet Corporation, and then and there known as United States Shipping Board vessel "Caribou"; that the said W. S. Bartlett, alias C. Williams, would then and there work and be employed as a workman then and there to be known and described as a "leading man" on said vessel "Caribou," and that the said G. M. Crocker, under the name and alias of H. Walker, would be employed as a workman then and there to be known and described as a "quarterman" on said vessel "Caribou"; that at the time when it was agreed the said

W. S. Bartlett, alias C. Williams, and the said G. M. Crocker, alias H. Walker, would work and be employed as aforesaid on said vessel "Caribou" that the said W. S. Bartlett and the said G. M. Crocker would then and there at the same time be employed and work-
15 ing for said United States Shipping Board Emergency Fleet Corporation in the capacity of captain and chief engineer, respectively, of said vessel called "Caribou"; that in said capacities of captain and chief engineer, respectively, of said vessel called "Caribou," in which capacities the said W. S. Bartlett and the said G. M. Crocker were then to be employed and to be receiving salary as aforesaid, it was then and there the duty of them, the said W. S. Bartlett and G. M. Crocker, to act as assistant inspector and to pass upon the question as to whether certain work then and there being done in and upon said vessel called "Caribou" by divers persons was being done in a fitting, proper, and workmanlike manner, and especially was it the duty of them, the said W. S. Bartlett and G. M. Crocker, respectively, to pass upon the question as to whether or not the very work which it was agreed the said W. S. Bartlett and G. M. Crocker would personally perform, was being done in a fitting, proper, and workmanlike manner; that by reason of the fact that the said W. S. Bartlett and the said G. M. Crocker were to be employed as aforesaid by said Leroy W. Walter, and actually perform certain work in and upon said vessel called "Caribou" in the capacity of "leading man" and "quarterman," respectively, as aforesaid, said United States Government, as represented by said United States Shipping Board Emergency Fleet Corporation, would (and it is charged that said United States Government thereby actually did) lose the benefit of the services of said W. S. Bartlett and G. M. Crocker in their capacities of captain and chief engineer, respectively, of said vessel "Caribou," and that said W. S. Bartlett and G. M. Crocker would, and actually did, neglect to perform their duties as assistant inspectors of the work being done on said vessel as aforesaid, which duties as assistant inspectors then and there devolved upon said W. S. Bartlett and said G. M. Crocker by virtue of the fact that they were then and there employed and receiving
16 salary from the United States Shipping Board Emergency Fleet Corporation in the capacity of captain and chief engineer, respectively, of said vessel "Caribou" as aforesaid; that it was further agreed that the fact that the said W. S. Bartlett and the said G. M. Crocker were personally performing certain work and labor upon said vessel "Caribou" and were neglecting to perform their duties as captain and chief engineer, respectively, which duties as captain and chief engineer, respectively, were then and there to act as assistant inspectors as aforesaid, would be covered up and concealed from the United States as represented by said United States Shipping Board Emergency Fleet Corporation by means of the alias and fraudulent and fictitious names C. Williams and H. Walker, respectively; that by means of the scheme aforesaid the said United States as represented by said United States Ship-

ping Board Emergency Fleet Corporation would be, and it is charged that said United States Shipping Board Emergency Fleet Corporation actually was, defrauded out of the services of said W. S. Bartlett and G. M. Crocker in the capacity of captain and chief engineer, respectively, of said vessel.

Overt act No. 1.

That in pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said W. S. Bartlett and G. M. Crocker, at an in the district aforesaid and within the jurisdiction of this court on the 23rd day of April, 1919, had themselves placed on the payroll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer,
17 respectively, were under the duty and obligation to act as and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 2.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said Charles A. Strang, James H. Strang, and Leroy W. Walter placed said W. S. Bartlett and G. M. Crocker on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on the said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, on said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer, respectively, were under the duty and obligation to act and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 3.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said W. S. Bartlett under the name of C. Williams did work as a "leading man" on said vessel "Caribou."

Overt act No. 4.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April
18 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court G. M. Crocker, under the name of H. Walker, did work as a "quarterman" on said vessel "Caribou."

Overt act No. 5.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said W. S. Bartlett, under the name of C. Williams did draw wages and received pay in the amount of forty-seven and 04/100 ($47.04) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said W. S. Bartlett as a "leading man" as aforesaid.

Overt act No. 6.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said G. M. Crocker, under the name of H. Walker, did draw wages and received pay in the amount of seventy-four and 24/100 ($74.24) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said G. M. Crocker as a "quarterman" as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

HERBERT S. PHILLIPS,
United States Attorney.

(Endorsed:) A true bill. L. Price, foreman. Filed this 26th day of July, A. D. 1920. Edwin R. Williams, clerk. Bail, $2500.00 each, Rhydon M. Call, Judge.

19 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA
vs.
LEROY W. WALTER ET AL. } Indictment No. 1101.

Demurrer to indictment and each count thereof.

And now comes Leroy W. Walter in his own proper person into court, and by his attorney, John W. Dodge, and having heard said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are above stated

and set forth, are not sufficient in law, and that he, the said Leroy W. Walter, is not bound by the law of the land to answer the same, and this he is ready to verify; and he here shows to the court:

1st. Said indictment failes to set forth or charge any crime or offense against the laws of the United States.

2nd. There are not sufficient facts alleged in said indictment and each count thereof, charging any offense or crime under the laws of the United States.

3rd. There are no sufficient allegations setting forth the scheme or device and means or way of accomplishing a fraud and of a fraudulent claim in said indictment or any count thereof.

4th. The alleged conspiracy and schemes do not sufficiently describe a criminal offense under the laws of the United States.

5th. The alleged means and ways are not shown to be unlawful in connection with the alleged conspiracy.

6th. No unlawful act is set forth in the said indictment or any count thereof.

20 7th. No lawful act is alleged or shown to have been accomplished or brought about by any unlawful means by the defendant herein.

8th. No actual knowledge of the various alleged unlawful means set forth in the indictment or any count thereof is shown or alleged to have been had by the defendant.

9th. There is no positive and definite allegation that the claim set forth for presentation or payment or approval was in fact false.

10th. There are no sufficient allegations showing the claim set forth in the indictment to be in fact false, fictitious, or fraudulent.

11th. There are no sufficient and specific allegations that the defendant knew the alleged claim to be false, fictitious, or fraudulent.

12th. The act of Congress under which said indictment and each count thereof is framed is unconstitutional and void so far as the same applies to any claim against a corporation in which the United States of America is a stockholder, or any conspiracy to defraud any corporation in which the United States of America is a stockholder.

13th. The allegations of said indictment and each count are based upon an act of Congress which is unconstitutional and void so far as said act applies to a corporation in which the United States of America is a stockholder.

14th. The allegations of said indictment show upon their face that the alleged criminal offense is not against the United States Government, but is against a corporation under the laws of the District of Columbia, and Congress exceeded its authority in attempting to make criminal any act which might affect said corporation

solely because the United States Government is a stockholder

21 in such corporation, and the act of Congress upon which said indictment and each count thereof is based is therefore unconstitutional and void, and the said indictment charges no crime against the United States under the Constitution of the United States.

Wherefore, for want of sufficient indictment in this behalf the said Leroy W. Walter prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment and each count thereof specified.

JNO. W. DODGE,
Attorney for defendant Leroy W. Walter.

(Endorsed:) Demurrer to indictment. Filed Aug. 11, 1920. Edwin R. Williams, clerk.

22 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA
vs.
W. S. BARTLETT ET AL. } 1101.

This cause coming on to be heard upon the demurrer to the indictment, and the same having been argued and submitted,

It is considered that said demurrer be and the same is hereby sustained.

Done this 5th day of February, 1921.

RHYDON M. CALL,
District Judge.

(Endorsed:) Order sustaining demurrer. Filed Feb. 5, 1921. Edwin R. Williams, clerk.

23 In the District Court of the United States, in and for the Southern District of Florida.

THE UNITED STATES OF AMERICA
vs.
LEROY W. WALTER ET AL.

Opinion.

The indictment in this case contains three counts, the first count charges that the defendants combined, conspired, confederated and agreed together to commit an offence against The United States, by making and presenting for approval and payment a fraudulent claim against the U. S. Shipping Board Emergency Fleet Corporation, the entire stock of which was owned by the United States.

It proceeds then to state the fraudulent nature of the claim. This statement may be epitomized as follows: The captain and chief engineer of the "Caribou," a boat owned and operated by the Fleet Corporation, and whose duties required them to act as assistant inspectors of repairs being made upon said vessel, and while the cap-

tain and chief engineer were receiving salaries as captain and chief engineer from the Fleet Corporation, were employed by the other defendants to perform duties for them in making such repairs and carried upon the pay roll to be paid by the Corporation under assumed or fictitious names, thereby causing them to neglect their duties as assistant inspectors of such repairs and thereby deceiving the Corporation.

The second count charges a conspiracy to obtain payment and approval of fraudulent claims against the Corporation, known to them to be fraudulent. The nature and fraudulent character of the claims being the same as set forth in the first count.

24 The third count charges a conspiracy to defraud the United States, the allegations of fraud, etc., being the same as set out in the other counts.

A demurrer was interposed to each of these counts. The case of United States vs. Strang, Thomas & Walter, decided by the Supreme Court on January 3rd, 1921, seems to me to settle the question in so far as the third count is concerned favorably to the defendants, and such demurrer must be sustained to the third count.

It is contended by defendants that the facts stated in the 1st and 2nd counts do not state a case of fraudulent claim against the Corporation. This contention I do not think well taken. The charges in the two counts, as I read them, are that the defendants conspired together to present to and and procure the payment from, the Corporation of the claim for work done for the other defendants in making repairs upon the vessel of which the claimants were, respectively, captain and chief engineer, by using fictitious names on the pay rolls, thereby preventing them from performing their duties as assistant inspectors of such repairs and while under pay by the Corporation as such captain and chief engineer. No man can be faithful to two masters such divergent interests as those of a contractor making repairs on a vessel and the owner. "No man can serve two masters. For either he will hate the one and love the other; or he will sustain the one and despise the other." To say that the secret employment of an employee of the owner to make repairs on the vessel, which repairs are to be paid for by the owner, while the owner has a right to expect such employee to inspect and pass upon such repairs, is a fraud upon such owners, states a correct proposition, which I do not think admits of contradiction.

Therefore I do not think the demurrers to these counts are well taken upon this ground.

25 It is further urged in support of the demurrer that a conspiracy to defraud the Fleet Corporation is not a crime against the United States, that Congress transcended its powers in passing the act of Oct. 23rd, 1918 (Chap. 194, 40 Stats. 1015, Sec. 10199, Compiled Statutes Supplement, 1919, p. 2337.)

The portion of that act bearing upon the question here raised is as follows: "Whoever shall make or cause to be made or present or

cause to be presented for payment or approval to ------ any corporation in which the United States of America is a stockholder any claim upon or against ------ any corporation in which the United States is a stockholder, knowing such claim to be false, fictitious or fraudulent," etc., and

"Whoever shall enter into any agreement, combination, or conspiracy to defraud ------ any corporation in which the United States of America is a stockholder by obtaining ------ the payment or allowance of any false or fraudulent claim."

The question may be stated thus, "has Congress the power under the powers delegated to the General Government by the Constitution to pass a law making it a crime against the United States to present or obtain payment of a claim against every corporation." If this question be answered in the negative the question then arises "does the fact that the United States as a stockholder in a corporation vest in Congress the power to make such presentation or payment of such a claim a crime against the United States."

The Government of the United States is a Government of delegated powers and is supreme within those powers. It is this principle that sustains the legislation concerning national banks and the laws punishing criminally acts forbidden by those laws. But I do not understand that the Congress has the power to declare the perpetuation of a fraud against every corporation, a crime
26 against the United States. The statute in question is not aimed at defrauding corporations organized by Congress pursuant to the powers delegated to the General Government, but says any corporation in which the United States is a stockholder, whether organized by one of the States or a foreign power. I am therefore constrained to answer the first question in the negative.

I now come to the second question, does the fact that the United States is a stockholder vest this power in the Congress.

In the Bank of the United States vs. Planters Bank of Georgia, 9 Wheat at star, page 908, Chief Justice Marshal says: "As a member of a corporation a government never exercises its sovereignty. It acts merely as a corporator and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act."

If this principle is sound, then the mere fact that the United States is a stockholder in a corporation would not vest in Congress the power to make a fraud upon such corporation a crime against the United States, and yet this is exactly what the statute attempts to do.

I realize that the Fleet Corporation was organized under the laws of the District of Columbia, under authority of the act of Congress, and may for that reason occupy a different status from an ordinary corporation organized under the statutes of one of the States, and I have been troubled by the consideration of the question whether, the statute being general as to any corporation generally, trading, or otherwise, I would have the power to consider the nature of the

corporation alleged to have been defrauded in reaching a con-
27 clusion as to the validity of the statute, but this being a criminal statute is to be strictly construed in protection of the liberty of the citizen, and I am therefore constrained to hold the demurrers to the 1st and 2nd counts must be sustained.

Done this 2nd day of February, 1921.

RHYDON M. CALL, *Judge.*

(Endorsed:) Opinion. Filed Feb. 2, 1921. Edwin R. Williams, clerk.

28 In the United States District Court of the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF *vs.* W. S. BARTLELL, ALIAS C. WILLIAMS, G. M. CROCKER, alias H. Walker, Leroy W. Walter, James H. Strang, Charles A. Strang and Henry C. Thomas, defendants.	No. 1101.

To the honorable judge of said court:

Comes now the United States of America by H. S. Phillips and W. McL. Christie, United States attorneys for the Southern District of Florida, and respectfully shows that on the 4th day of February, A. D. 1921, the court made an order in said cause sustaining the demurrers of Leroy W. Walter to the indictment in said cause, and

Your petitioner feeling itself aggrieved by the said ruling of the court entered therein as aforesaid herewith petitions the court for an order allowing the United States of America to prosecute a writ of error to the Supreme Court of the United States under the law in such cases made and provided.

The premises considered, your petitioner prays that a writ of error do issue in its behalf to the Supreme Court of the United States sitting at Washington for the correction of the erors complained of and herewith asigned.

H. S. PHILLIPS,
W. McL. CHRISTIE,
United States Attorneys for Petitioner in Error.

(Endorsed:) Petition for order allowing writ of error. Filed Feb. 22, 1921, Edwin R. Williams, clerk.

29 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* W. S. BARTLETT, ALIAS C. WILLIAMS, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Charles A. Strang, and Henry C. Thomas, defendants.	#1101.

Order allowing writ of error.

The foregoing cause coming on this day to be heard upon petition for a writ of error and the assignments of error submitted therewith, it is upon consideration thereof ordered that said petition be granted and that a writ of error be allowed.

Done and ordered this 21st day of February, A. D. 1921.

RHYDON M. CALL,
United States District Judge.

(Endorsed:) Order allowing writ of error. Filed Feb. 22, 1921. Edwin R. Williams, clerk.

30 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* W. S. BARTLETT, ALIAS C. WILLIAMS, G. M. CROCKER, ALIAS H. WALKER, LEROY W. WALTER, JAMES H. STRANG, CHARLES A. STRANG, and HENRY C. THOMAS, defendants.	#1101.

Assignment of errors.

Comes now the United States of America, plaintiff in said cause, by H. S. Phillips and W. McL. Christie, United States attorneys for the Southern District of Florida, and in connection with the plaintiff's petition for a writ of error in this cause assigns the following errors upon which plaintiff in error relys to recover the judgment of the court herein as appear of record, to wit:

1.

The court erred in sustaining the demurrer of the said Leroy W. Walter to the indictment in said cause.

2.

The court erred in sustaining the demurrer to the first count of the indictment in said cause.

3.

The court erred in sustaining the demurrer to the second count of the indictment in said cause.

4.

The court erred in sustaining the demurrer to the third count of the indictment in said cause.

5.

The court erred in holding that the act of October 23rd, 1918 (chapter 194, 40 Stats. 1015), is unconstitutional.

31 Wherefore, the United States as plaintiff in error prays that the judgment of said court be reversed.

H. S. PHILLIPS,
W. McL. CHRISTIE,
United States Attorneys for the Southern District of Florida for Plaintiff in Error.

(Endorsed:) Assignment of errors. Filed Feb. 22, 1921. Edwin R. Williams, clerk.

32 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the District Court of the United States for the Southern District of Florida, greeting:

Because of the record and proceedings, and also in the rendition of the decision sustaining a demurrer to an indictment which is in said district court before you, between the United States of America and Leroy W. Walter, a manifest error has happened to the great damage of the said United States of America as by its complaint appears. We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your hand and seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 15th day of April, A. D. 1921, in the Supreme Court then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] EDWIN R. WILLIAMS,
Clerk of the District Court of the United States for the Southern District of Florida.

Endorsed: Writ of error.

33 UNITED STATES OF AMERICA, *ss:*

To Leroy W. Walter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the 15th day of April, 1921, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of Florida, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there by, why the decision and order of the District Court of the United States for the Southern District of Florida sustaining the demurrer to the indictment, as in said writ of error mentioned, should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rhydon M. Call, judge of the United States District Court for the Southern District of Florida, this 16th day of March, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] EDWIN R. WILLIAMS,
Clerk of the United States District Court for the Southern District of Florida.

Service of the within and foregoing citation accepted this 16th day of March, 1921.

JNO. W. DODGE,
Solicitor for the Defendant in Error.

34 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* W. S. BARTLETT, ALIAS C. WILLIAMS, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Charles A. Strang, and Henry C. Thomas, defendants.	#1101.

To the honorable clerk of said court:

In preparing a transcript of record in said cause you will please include the following:

1. The indictment filed July 26, 1920.
2. The demurrer to indictment filed August 11, 1920.

3. The order of court sustaining the demurrer to the indictment filed February 5, 1921.
4. The opinion of the court on the sustaining of the demurrer to the indictment filed February 2, 1921.
5. The petition for writ of error.
6. The order allowing writ of error.
7. Assignments of error.
8. Writ of error.
9. Acknowledgment of receipt of copy of assignments of error and these directions by the attorney for defendants in error.
10. The citation showing acceptance of service of same.
11. These directions.

H. S. PHILLIPS,
W. McL. CHRISTIE,
Attorneys for Plaintiff.

35 I hereby acknowledge receipt of copy of the foregoing directions to clerk together with copy of assignments of error. This 23 day of February, A. D. 1921.

JNO. W. DODGE,
Attorney for Defendant Leroy W. Walter.

(Endorsed:) Directions for making up transcript. Filed February 24, 1921. Edwin R. Williams, clerk.

36 United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA:
Southern District of Florida.

I, Edwin R. Williams, clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said court, do hereby certify the foregoing typewritten pages and part pages numbered from one to 35, both inclusive, constitute a true and correct copy of the original record and proceedings including the assignment of errors in a cause lately pending in this court wherein the United States of America is plaintiff and Leroy W. Walter is defendant, as prepared by directions filed in said cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Jacksonville, in said district this 21st day of March, A. D. 1921.

EDWIN R. WILLIAMS,
Clerk, U. S. District Court.

(Endorsed on cover:) File No. 28600. S. Florida, D. C. U. S. Term No. 223. The United States of America, plaintiff in error, vs. Leroy W. Walter. Filed December 10th, 1921. File No. 28600.

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